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May 14, 2024

Via ECF

Honorable Nicholas G. Garaufis
United States District Judge
271 Cadman Plaza East
Brooklyn, New York 11201

Re: USA et al. v. City of New York
Civil Action No: 07 Cv. 2067 (NGG)

Dear Judge Garaufis:

The City writes today to further update this Court concerning its progress regarding this Court's March 14, 2024 directive to the City "to provide adequate staff to address the backlog of EEO complaints and effectively resolving incoming complaints going forward." Following our April 12, 2024 update to the Court, the City has been in regular discussions with the Court Monitor regarding its long and short term plans and progress. Having engaged in those discussions and received input from the Monitor regarding the City's efforts, the City now wishes to further update the Court regarding EEO case investigations prior to the May 20, 2024 conference.

In just two months, the City has achieved significant progress, and we expect further improvement over the coming months. As an initial matter, we are pleased to advise the Court that the City has met – earlier than projected – the targets set forth in its April 12, 2024 letter to the Court. Since the March 14 conference, the EEO office has closed more than 70 cases (15 complaints and 55 inquiries), including 34 matters that were more than 90 days old (13 complaints and 21 inquiries) and we anticipate additional cases will be closed prior to the conference.

Due to these efforts, the FDNY EEO office has far less cases pending now than at the last conference, and the length of time that cases are pending has begun sharply decreasing. Since the beginning of 2024, FDNY EEO has, while continuing to absorb the full influx of new

matters, cut the amount of pending cases by 27%, from 121 cases at that time, to 88¹ cases today. Since the March 2024 conference, the EEO office has cut the average time a case is pending by almost a month, with cases pending 165 days on average in March and 141 days now. While the average time that cases were pending was already decreasing by the time of last conference, the rate of decline has increased sharply with our recent interventions. Between March 14 and today, the time the average case is pending has declined 24 days, while only declining three days from the beginning of the year through March 14.²

The EEO office is also increasing productivity in other important functions. Since January 2024, FDNY has already conducted EEO inspections of over 44 fire companies, a significantly increased pace when compared to 2023. The frequency of these inspections will continue to increase as additional EEO staff are brought on board.

FDNY also continues to make substantial and rapid progress on hiring full time staff. The two new investigators identified and approved as of the April 12, 2024 letter are finishing their background checks, with one scheduled to start on May 28 and the other expected to start shortly thereafter. FDNY has, since our last update to the Court, identified two additional investigators who have accepted conditional offers and a third additional investigative position for which the interview process is about to conclude. Additionally, the selection process is now underway for a hybrid Reasonable Accommodation and Investigative Attorney position. When concluded, this will represent an increase of six new attorneys since March. By contrast, EEO added four new attorneys in the whole of 2023. Moreover, absent attrition, we project FDNY will have all six of these staff on board for a total of nine full-time EEO investigators and one hybrid attorney in place by July or August of this year.

In the meantime, to ensure prompt completion of investigations, the City is continuing efforts to redirect temporary resources to EEO to allow it to promptly investigate complaints until the office returns to full staffing. Those resources include three FDNY attorneys working in other areas of the Legal Bureau who have received six reassigned cases just over a month ago have brought many those cases to completion. Additionally, three Law Department attorneys from our Labor and Employment Law Division have completed their training and each attorney has now received their first case from FDNY. These attorneys will remain at the Law Department but will be assigned cases in lieu of Law Department work as FDNY's needs demand. We will continue assigning cases to these individuals until the later of the FDNY EEO office becoming fully staffed and more than 85% of cases pending 90 days or less.

¹ On January 1, 2024, EEO had 121 pending matters, which included 39 complaints (29 pending over 90 days) and 82 inquiries (38 pending over 90 days). Today, that number has been cut to 88 matters include 31 complaints (19 pending over 90 days) and 57 inquiries (25 pending over 90 days).

² This quick decline in pending case time is particularly encouraging because, for most of the period in question, the City was still in the process of putting its additional resources in place, including providing training and necessary logistics. With all those resources now in place and multiple new full-time staff slated to begin, we expect this sharp decline to continue.

In addition to these resources, the Law Department has recruited at least two additional attorneys who will be trained and assigned investigations to further support the work of the Fire Department. We also continue to work collaboratively with the retired Judges recruited by the Corporation Counsel as they complete their assigned investigations. We will continue to assign investigations to these Judges should they be so interested, but this program will be considered “value added” moving forward and will not be utilized as a dedicated resource moving forward.

Additionally, the City has put in place a plan to ensure future attrition does not interrupt the EEO office’s ability to promptly handle complaints. Three attorneys from other units of FDNY Legal Affairs will be designated as reserve back up investigative attorneys in the event EEO staff departs. Each of these designated reserve attorneys will be cross trained and familiarized on the EEO policy and investigative procedures and granted access to the EEO database when necessary. FDNY will always maintain three such cross-trained attorneys. In the event of an EEO staff member departure, one or more of the cross-trained attorneys (depending on the number of cases held by the departing attorney) will be able to step in and assist EEO with reassigned cases or new investigations, until the vacant position is filled. Should there be multiple departures such that the use of these back up attorneys is insufficient, the Law Department will provide additional resources to EEO to be trained and handle cases.

We also intend to take steps to reduce any period of vacancy between the departure of an EEO investigator and their replacement. FDNY will do this by posting for a vacancy in accordance with City guidelines immediately upon learning that a position will soon become vacant, rather than when the attorney leaves as has been standard practice. To expedite search processes, FDNY will maintain a resume bank of qualified applicants and will use said resume bank to fill vacant positions, in accordance with City policies.

The FDNY is also committed to identifying and promptly addressing any factors that increase attrition. We have observed a decrease in attrition following recently negotiated salary increases and flexible work scheduling. In order to ensure this trend continues, we will conduct regular exit interviews of EEO office employees to track the reasons for departure and proactively identify and address any drivers of increased attrition.

We thank the Court for its consideration of this submission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Eichenholtz".

Eric Eichenholtz
Assistant Corporation Counsel

cc: Court Monitor Cohen and Counsel of Record (by e-mail)